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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-189805

DATE: October 15, 1977

MATTER OF: Octagon Process, Inc.

## DIGEST:

1. Allegation that solicitation is defective because it restricts competition exclusively to small businesses is untimely under 4 C.F.R. § 20.2(b)(1) when filed after bid opening.
2. Allegation that other bidders are not small businesses under total small business set-aside is properly for resolution by Small Business Administration in accordance with procedures of ASPR § 1-703(b)(1), implementing 15 U.S.C. § 637(b)(5).

Octagon Process, Inc. (Octagon) has protested the making of any award for the purchase of decontaminating agent under Invitation for Bids No. DSA 400-77-B-0911, a total small business set-aside issued by the Defense Logistics Agency.

Octagon contends that there are no small business manufacturers of this item and that, therefore, none of the bidders qualifies for award.

Octagon did not protest the decision to restrict competition to small businesses prior to the bid opening. Under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), any such post-bid opening protest against an alleged solicitation defect is untimely and will not be considered by our Office. Tenco Construction Company, B-187137, December 21, 1976, 76-2 CPD 512.

Octagon's contention that none of the other bidders qualifies as a small business is not for consideration by the General Accounting Office since exclusive authority over the question of a bidder's size status is vested by statute in the Small Business Administration. 15 U.S.C. § 637(b)(6) (1970). In this regard, Armed Services Procurement Regulation § 1-703(b)(1) states:

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"\* \* \*. Any bidder, offeror, or other interested party may, in connection with a contract involving a small business set aside or otherwise involving small business preferential consideration, challenge the small business status of any bidder or offeror by sending or delivering a protest to the contracting officer responsible for the particular procurement. \* \* \*. In order to apply to the procurement in question, such protest must be filed with and delivered to the contracting officer prior to the close of business on the fifth day exclusive of Saturday, Sunday, and legal holidays after bid opening date for formally advertised and small business restricted advertised procurements."

Octagon did not protest the size status of any of the bidders within the period provided.

Accordingly, the protest is dismissed.

*for* *Newton J. Aschler*  
Paul G. Dambling  
General Counsel